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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BARBARA JEAN GIDDINGS,

Plaintiff and Respondent,

v.

JEAN SHIOMOTO, as Director of  
Department of Motor Vehicles, etc.,

Defendant and Appellant.

D074936

(Super. Ct.  
No. 37-2017-00003019-CL-PT-NC)

APPEAL from an order of the Superior Court of San Diego County,

Earl H. Maas, III, Judge. Reversed.

Xavier Becerra, Attorney General, Chris A. Knudsen, Senior Assistant Attorney General, Celine Cooper and Jodi L. Cleesattle, Deputy Attorneys General, for Defendant and Appellant.

Leslie Legal Group, Sean F. Leslie and Erica Bloom, for Plaintiff and Respondent.

Shortly after Barbara Jean Giddings was detained on suspicion of driving while intoxicated, she was admonished about refusing the required blood-alcohol chemical testing. Among other possible consequences, the police officer told her that if she would not submit to the test, her driver's license would be automatically suspended for one year. She refused, and her license was suspended.

On his report form, the arresting officer noted that Giddings had been driving at "1219" but that he admonished her at "12." On the basis of this inconsistency, Giddings challenged whether she had been properly admonished. She sought relief from the Department of Motor Vehicles (DMV) at an administrative hearing, but the suspension was upheld. Giddings then filed a petition for writ of mandate directing the DMV to reverse its decision, which the trial court granted.

On appeal, the DMV argues that the evidence of the alleged "factual impossibility" was insufficient to justify a writ of mandate setting aside the administrative license suspension. We agree. A scrivener's error with respect to the timing of the admonition does not displace the great weight of evidence showing that Giddings refused the chemical test after having been properly admonished. Accordingly, we reverse and remand with directions to deny the petition.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *The Arrest*

At 12:19 p.m. on November 9, 2016, Barbara Jean Giddings was observed driving erratically. According to another motorist, Giddings stopped her car in the middle of an intersection during a yellow light and appeared to be falling asleep. When she continued

driving, she hit the middle island with her car twice, causing sparks and smoke. Shortly thereafter, she pulled into a grocery store's parking lot. The observant motorist parked next to Giddings, watched her stumble out of the car, and called the police.

Carlsbad Police Officers Ramirez and Zavala arrived at the parking lot at 12:32 p.m. When Ramirez contacted Giddings, she was attempting to use her own car key to enter a different car. Her speech was slow and slurred, her eyes bloodshot and watery, her balance unsteady, her lips stained reddish purple, and there was a strong odor of alcohol on her breath. At 12:45 p.m., Ramirez placed her under arrest for driving under the influence and admonished her about refusing to comply with the required chemical testing. As part of the admonition, Ramirez told Giddings that her license would be suspended for one to three years if she did not comply, but she still refused. Later that afternoon, a warrant was issued for the chemical test, and at 3:44 p.m. the blood was drawn, which measured her blood alcohol concentration at .158 percent.

B. *The DMV Upholds the Suspension Following an Administrative Hearing.*

At an administrative hearing before the DMV, Giddings challenged the suspension of her license and claimed there was insufficient evidence that she had been admonished about the chemical test. She argued that the arresting officer's report indicated that the admonition took place at 12:00 p.m., which was a factual impossibility given that Giddings was only seen driving at 12:19 p.m. and contacted by police some time afterward. She also noted that the officer did not check a "Chemical Test Refusal" box on the report. The DMV rejected her argument and found it reasonable to infer "from the

totality of facts in evidence ... that the officer made a clerical error with regards to the time of the admonition" and failure to check the refusal box.

C. *The Trial Court Grants the Writ of Mandate.*

Giddings then filed a petition for writ of mandate in San Diego Superior Court directing the DMV to set aside its suspension of her license.<sup>1</sup> The court's tentative ruling denied the petition, characterizing the admonition time notation as a "scrivener's error, which is corrected by the other portion of the officer's statement." At the hearing on the petition, counsel for the DMV appeared late, apparently due to traffic issues. By the time she arrived, the court had already decided to grant the requested relief. In the accompanying minute order, the court granted the petition and ordered "the stay subject to Ms. Giddings complying with all the requirements." Giddings' counsel was directed to submit a formal order. The court thereafter issued an Order directing the DMV to set aside its "Administrative Per Se (APS) refusal suspension of [Giddings's] driving privileges . . . ."

The DMV filed an ex parte motion for further hearing on the petition, and the court held a hearing on the request. It denied the ex parte motion "due to non-emergency of the request." The court also amended the order granting the writ petition to reflect that

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<sup>1</sup> Giddings incorrectly filed her petition as a limited civil case in San Diego Superior Court. Following an improper appeal to the Appellate Division of the Superior Court, the case was transferred to this court pursuant to Code of Civil Procedure section 396.

if Giddings violated "the terms of her probation imposed upon her through the criminal action, the APS one-year suspension shall be reinstated . . . ."

## DISCUSSION

### A. *Relevant Legal Standards*

At an administrative hearing before the DMV in which a petitioner contests an APS refusal suspension, the DMV bears the burden of proof of showing by a preponderance of evidence that, among other elements, a petitioner was properly admonished. (Veh. Code, § 13557, subd. (b)(1)<sup>2</sup>; *Daniels v. Dep't of Motor Vehicles* (1983) 33 Cal.3d 532, 536; *Burge v. Department of Motor Vehicles* (1992) 5 Cal.App.4th 384, 388.)

In ruling on a petition for a writ of mandate seeking to set aside a driver's license suspension, the trial court uses its independent judgment to determine whether the weight of the evidence supports the administrative decision. (*Lake v. Reed* (1997) 16 Cal.4th 448, 456; *Murphey v. Shiimoto* (2017) 13 Cal.App.5th 1052, 1068–1069 (*Murphey*).) An administrative license suspension of this sort is wholly independent of any criminal proceeding involving the same incident. (See, e.g., *Robertson v. Department of Motor Vehicles* (1992) 7 Cal.App.4th 938, 947.)

On appeal, we review whether " 'the trial court's findings are supported by substantial evidence, resolving all evidentiary conflicts and drawing all legitimate and

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<sup>2</sup> All statutory references are to the Vehicle Code except where otherwise indicated.

reasonable inferences in favor of the trial court's decision.' " (*Murphey, supra*, 13 Cal.App.5th at p. 1069, quoting *Morgenstern v. Department of Motor Vehicles* (2003) 111 Cal.App.4th 366, 372–373.)

B. *The Evidence Established that Giddings Was Lawfully Arrested and Refused the Chemical Test After Being Properly Admonished.*

Giddings declines to challenge several of the elements required for the DMV to automatically suspend Giddings's driver license for refusal to consent to chemical testing: (1) reasonable cause to believe she was driving under the influence of alcohol in violation of section 23152; (2) lawful detainment; and (3) refusal to submit to or failure to complete requested chemical testing. (§ 13353, subd. (d); see also § 13557, subd. (b)(1); § 13558, subd. (c)(1); *Troppman v. Valverde* (2007) 40 Cal.4th 1121, 1131.) But she contests whether she was properly admonished of the consequences for refusing the blood test, arguing that the DMV has "not produce[d] any evidence of a timely admonition."

Giddings bases her argument on an alleged "factual impossibility." In one of his two reports, the arresting officer noted that Giddings had been driving at "1219," that the arrest occurred at "1245" p.m., and that he admonished her at "12." Giddings claims that because "12" must mean 12:00 p.m., it precedes the time of contact and arrest and, accordingly, "is a factual impossibility."

Altogether, the evidence plainly shows that this alleged inconsistency was simply a scrivener's error. The DMV hearing officer properly admitted Ramirez's sworn statement (the DS-367 report) and unsworn arrest report. (Evid. Code, § 1280; see also

*Murphey, supra*, 13 Cal.App.5th at p. 1063 ["Where an officer files a sworn statement with the Department of Motor Vehicles, the officer's unsworn arrest report is admissible at the administrative per se hearing to supplement the sworn report."], citing *MacDonald v. Gutierrez* (2004) 32 Cal.4th 150, 159.) Both the sworn statement and the unsworn arrest report contain information clarifying that the admonition took place after the arrest. The sworn statement states that "[f]ollowing the arrest, Giddings refused to submit to a blood or breath test," and the arrest report indicates that after arrest and reading of her *Miranda* rights, "Giddings refused to submit to a chemical test prior to and after being admonished of the implied consent law . . . ."

At the administrative hearing, Giddings also noted that Ramirez failed to check one "Chemical Test Refusal" box at the top left portion of the second page of his report. But Ramirez checked three other boxes, on three separate pages, for chemical test refusal in his sworn statement and arrest report. Giddings has not identified any other evidence that disputes the admonition. In this context, it is not reasonable to infer that the admonition did not occur. Accordingly, we reverse the trial court's order granting Giddings's petition.

Because we reverse, we need not address the DMV's additional arguments challenging the petition.

## DISPOSITION

The order is reversed, and the case is remanded to the trial court with directions to enter an order denying the petition. Parties shall bear their own costs on appeal.

DATO, J.

WE CONCUR:

O'ROURKE, Acting P. J.

IRION, J.